THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.29461 of 1997

Date: 04.04.2007

Between:

Ramapuram Grampanchayat.

....Petitioner

and

The Government of A.P. and others.

....Respondents

O R D E R:

The petitioner is a Gram Panchayat. It seeks a declaration to the effect that the Explanation to Section 147 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), through which the A.P. Industrial Infrastructure Corporation Limited (for short 'A.P.I.I.C.'), the third respondent herein, is equated to a local authority; is illegal, unconstitutional and violative of Articles 40, 243-G and 243-H of the Constitution of India. It also challenges the notification issued by the first respondent in G.O.Ms.No.113, Panchayat Raj, Rural Development & Relief (PTS.IV) Department, dated 04.03.1995.

The third respondent brought about an industrial estate within the limits of Ramapuram Gram Panchayat, Tada Mandal, Nellore District. The first respondent issued G.O.Ms.No.113, dated 04.03.1995, in exercise of its powers under Section 147 of the Act directing that the powers referable to Sections 60 to 69, 93 to 103, 120, 123, 126 to 129, 131 to 142, 145, 255, 256, 257 and 273 of the Act shall vest in the third respondent vis-à-vis industrial estate. The petitioner contends that the sole basis for the issuance of G.O.Ms.No.113 is, the Explanation added to Section 147, for which no analogous provision was contained in the Andhra Pradesh Gram Panchayat Act, 1964. It is also contended that the local authorities have their own uniform and common framework,

such as the elections being held from time to time, the participation of people; etc, and by no stretch of imagination, the third respondent can be treated as a local authority.

On behalf of the first respondent, a counter-affidavit is filed narrating the circumstances that led to the issuance of the impugned G.O. It is stated that the third respondent had developed the estate and it is in the fitness of things that the maintenance thereof is entrusted to it. It is also alleged that the maintenance of industrial areas needs expertise and a different approach, compared to the maintenance of residential and commercial areas in a Gram Panchayat. Other contentions have also been urged to explain as to how it becomes necessary to entrust the powers under the relevant provisions of the Act on the third respondent.

Almost on the same lines, a counter-affidavit is filed on behalf of respondents 3 and 4.

Sri V.Sudhakar Reddy, the learned counsel for the petitioner submits that the addition of Explanation to Section 147 of the Act runs contrary to the very spirit and object of Panchayat Raj Institutions. He points out that the Constitution was amended with a view to strengthen the democratic spirit in the Panchayat Raj Institutions, whereas in the consequential enactment, a provision was added, which has the opposite value. He contends that even while issuing the impugned G.O., the first respondent did not follow the procedure stipulated under Section 147 of the Act and that no notice was issued to the Gram Panchayat.

Sri A.Satya Prasad, the learned Special Counsel for the Government submits that the explanation came to be added in view of the fact that industrial estates have come into existence in various parts of the State and in view of the experience that the

Gram Panchayats were not able to maintain them properly. He further contends that the impugned G.O. was issued, duly taking into account, the relevant provisions of law and the interests of the local authorities concerned.

The learned standing counsel for respondents 3 and 4 advanced arguments on the same lines.

The establishment and administration of the Gram Panchayats was governed by the Andhra Pradesh Gram Panchayats Act, 1964. Separate enactments existed as regards Mandal Parishads, Zilla Parishads, etcetera. Through the 73rd amendment to the Constitution of India, the Parliament enacted several provisions, to strengthen and vitalise the Panchayat Raj Institutions. Thereupon, a comprehensive legislation, namely, the Andhra Pradesh Panchayat Raj Act, 1994, came to be enacted, covering all the Panchayat Raj Institutions in the State.

Section 147 of the Act provides for transfer of functions of Gram Panchayats and other local authorities *inter se*. The Gram Panchayat Act contained a similar provision namely Section 230. The body of the two sections is almost similar. However, Section 147 of the Act contains an Explanation. The section reads as under:

> **Transfer of functions of Gram Panchayats to other local authorities or vice versa**:- Notwithstanding anything in this Act, or in any law relating to other local authorities, the Government may, in consultation with the Mandal Parishad or Zilla Parishad or other local authority as the case may be, and the Gram Panchayat concerned, by notification and subject to such restrictions and conditions and to such control and revision as may be specified therein, direct that,-
>
> (a) any power or function vested in the Gram Panchayat by or under this Act, shall be transferred to and exercised and performed by the Mandal Parishad or Zilla Parishad or the other local authority; and

(b) any power or function vested in the Mandal Parishad or Zilla Parishad or the other local authority shall be transferred to and exercised and performed by a Gram Panchayat.

Explanation:- For the purpose of this section, 'local authority' includes, the Andhra Pradesh Industrial Infrastructure Corporation Limited.

On behalf of the petitioner, it is urged that equation of the third respondent-Corporation with a local authority cannot be sustained either on facts or in law. To certain extent, this Court is also convinced that there is a radical and substantial difference between Panchayat Raj Institutions on the one hand and A.P.I.I.C on the other, from many points of view. Basically, the Panchayat Raj Institutions run with the public participation and their affairs are managed by democratically elected bodies. In contrast, the Corporation is a company incorporated under the Companies Act and the election process is totally alien to it.

This Court would have gone deeper into the matter, but for the fact that certain other grounds exist to grant relief to the petitioner. From a perusal of Section 147 of the Act, it is evident that the transfer of powers from one local authority to another can take place, only after consultation with the one, from which such powers are sought to be transferred. Since the consultation is required under a Statute, it must be evident from the record, and the effected local body must have been put on notice, before its powers were transferred.

In the instant case, the petitioner was not at all put on notice before its powers under the provisions referred to in G.O.Ms.No.113, dated 04.03.1995, were transferred in favour of the third respondent. On this short ground, the G.O. is liable to be set aside. The point urged by the petitioner, about the legality of Explanation to Section 147 of the Act, is left open.

While admitting the writ petition, an interim order was granted by this Court in favour of the petitioner on 02.07.1999 and the same is in force all through.

Hence, the writ petition is allowed and G.O.Ms.No.113, dated 04.03.1995, in so far as it relates to the petitioner-Gram Panchayat is set aside. There shall be no order as to costs.

_____

04.04.2007

Note: L.R. Copy be marked.

kdl